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IN THE

Supreme Court of the United States

October Term, 1977
No. 77-569

ZURN ENGINEERS,

Petitioner,

vs.

THE STATE OF CALIFORNIA, acting by and through its Department of Water Resources,

Respondent.

On Petition for Writ of Certiorari to the California Court of Appeal.

PETITIONER'S REPLY BRIEF.

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Contrary to the contentions asserted by Respondent in its brief, constitutional issues which are ripe for decision do exist in this case because:

I

The Issue of Whether the Requirement of Due Process of Law Guaranteed by the 14th Amendment Prohibits the State's Engineer From Acting as the Final Adjudicator of Petitioner's Claims Is Ripe for Decision.

Since the Court of Appeal has directed that the contractor's claims be referred back to the State's Engineer for reconsideration and a new decision by the Engineer after satisfying Petitioner's due process rights,

the State contends that it cannot be presumed that Petitioner will be deprived of constitutional rights in those further proceedings. As to the type of hearing which may be afforded to Petitioner on remand, the State is correct and any constitutional defects therein as to procedure would have to be raised in the future upon judicial review of the new decision. However, as to the issue raised by Petitioner herein, the State's argument misses the point entirely.

It is a fundamental concept of due process of law that parties to a controversy are entitled to have them determined by an impartial tribunal and that officers, who act in a judicial or quasi-judicial capacity, are disqualifed by their interest in the controversy to be decided. *Tumey v. Ohio,* 273 U.S. 510, 71 L.Ed. 749 (1927).

The issue presented by Petitioner herein is whether the State's Engineer, who acts in a quasi-judicial capacity in deciding contractor's claims, is, by reason of his involvement and interest in the controversy, constitutionally prohibited from acting as the final arbiter of the claims. If so, the constitutional defect obviously cannot be cured by remanding the matter to the very Engineer who is disqualified from acting therein. Although this specific constitutional issue was presented to the Court of Appeal, it refused and failed to address or discuss said issue in its opinion.

Accordingly, this issue, which clearly presents a federal constitutional question, is ripe for decision by this Court at this time.

II

The Applicability of California Government Code Sections 14378 and 14379 Is Governed by the Date the Engineer's Decision Is Rendered.

Respondent contends that Sections 14378 and 14379 of the California Government Code are inapplicable herein because they were enacted after the subject contract was entered into between the parties. As Respondent well knows, however, these sections have been construed by the administrative law judges to apply to any engineer's decision which is rendered after the date said sections were enacted, regardless of the contract execution date.

Since a new engineer's decision is to be rendered in this matter pursuant to the Court of Appeal's opinion the only bar to Petitioner's right to appeal that new decision to the State Office of Administrative Hearings for a *de novo* fair trial is the fact that Petitioner seeks more than $50,000.00 in its claims.

Conclusion.

For the foregoing reasons and for the reasons set forth in the petition herein, it is respectfully requested that a writ of certiorari be issued in this case.

Respectfully submitted,

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